

From: Jonathan Heller <sweetrecords@mac.com>
Sent: Sunday, April 4, 2021 7:34 PM
To: Ryan Morrison <rmorrison@burlingtonvt.gov>
Subject: Response to Tom's public comment

[WARNING]: This email was sent from someone outside of the City of Burlington.

Hello and thank you for taking the time to review my conditional use permit (ZP18-0682CU) for a bed and breakfast. I appreciate your time and consideration.

I would like to first start by addressing excerpts from Tom Walsh's public comments received in association with this review.

Tom: "The B&B Application significantly misrepresented the rental activity. Renters do not enter/exit the front door as the owner does. There is a separate side entrance, on my common boundary a few feet from my property. This doorway leads to a separate unit. There is no sharing of the house. The rental is a completely separate apartment. The AirBnb rental listing reads: "Private HotTub Oasis Retreat Ski, Brews, Beach, Bike." "Entire home- You'll have the house to yourself." "Hot tub, swimming pool, Bikes and sleds included! It feels like a tiny house in the trees.".' Private entrance -Separate street or building entrance." Although the listing currently says no kitchen, the comment section from November 2020 states: "My deepest apologies for not making the lack of freezer and the size of the convection microwave oven more clear." This is a whole unit, not merely "1 BR in a single family home" and is therefore significantly inconsistent with the approved B&B permit/ permit application."

I am one of the few airbnb hosts in Burlington that has made a point of being compliant with the zoning ordinance by going through the review process and obtaining a conditional use permit for my Airbnb.

Zoning Permit 94-013 allows for a front entry and gable over the garage. The room Tom is referring to is accessed from within the home and is not separate. Guests only use their designated room during the duration of their stay. There is a kitchenette only in the room.

The conditional use permit provided by the Development Review Board was based on their in person inspection and review of the current airbnb listing.

Since the original in person review and inspection, no construction or alteration has occurred that would require me to seek a new zoning permit.

III. Motion

7. Any additional B&B room, or physical alteration, will require a new zoning permit, subject to regulations in effect at the time of permit application submittal.

No physical alterations have occurred. My intention is to be compliant and have the necessary permits to operate.

Tom: "The City is currently addressing short-term rentals. The reform, specifically Amendment No. ZA-20-05, limits the number of housing units that can be converted into short-term rental uses. This reform creates "[c]lear standards for short-term rentals that

differentiate between a 'bedroom(s) within a unit' and a 'whole unit' short-term rental " The reform provides greater restrictions on "whole unit" rentals by stating that these are considered a non-residential use that requires, among other things, that the use be approved as a conditional use. The City's amendment is indicative of the City's clear intent to limit "separate apartment" short-term rentals due to their heightened impacts on the community."

Here is the link to Amendment No. ZA-20-05 as referenced - <https://www2.burlingtonvt.gov> > [\(Zoning\) & Ch. 18 - City of Burlington, VT](#) [Attachment](#). I strongly encourage a complete read through of the referenced proposal.

This amendment intends to define Short term rentals separate of lodging establishments:

Lodging: An establishment providing for a fee three or more temporary guest rooms and customary lodging services (such as onsite staffing at all hours, lobby space, and room service), and subject to the Vermont rooms and meals tax. Lodging may, or may not, be owner occupied. Lodging does not include historic inns or short term rentals (except when per-building short term rental limits noted in Chapter 18: Minimum Housing Standards of the City Code of Ordinances are exceeded).

Short term rental (STR): A dwelling unit that is rented in whole or in part to guests for less than thirty (30) consecutive days and for more than 14 days for overnight stays per calendar year and is subject to the Vermont rooms and meals tax, pursuant to Chapter 18: Minimum Housing Standards of the City Code of Ordinances.

The amendment proposes changes to Appendix A - Use Table - All Zoning Districts. The amendment would update the use table below to permit short term rentals in all residential areas. Appendix #33 specifically states, "Short term rentals are permitted by right, subject to per building limitations and rental registration requirements pursuant to Chapter 18: Minimum Housing Standards of the City Code of Ordinances." It is also considered a special residential use, "This will establish that short term rentals are allowed anywhere that residential uses are allowed, and will refer to Ch. 18 for specific standards."

2. Add STRs as a "special residential use" to Appendix A- Use Table and in Article 14- Downtown Code

This will establish that short term rentals are allowed anywhere that residential uses are allowed, and will refer to Ch. 18 for specific standards.

Appendix A-Use Table – All Zoning Districts

	Urban Reserve	Recreation, Conservation & Open Space			Institutional	Residential			Downtown Mixed Use ¹	Neighborhood Mixed Use				Enterprise	
USES	UR	RCO - A	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
RESIDENTIAL USES	UR	RCO - A ¹	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
As written															
RESIDENTIAL SPECIAL USES	UR	RCO - A	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
Rest of Residential Special Uses as written															
Short-Term Rental ²⁵	N	N	N	N	Y	Y	Y	Y	N	Y	Y	Y	Y	N	N
NON-RESIDENTIAL USES	UR ²¹	RCO - A	RCO - RG	RCO - C	I	RL/W	RM	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
Rest of Non-Residential Uses as written															
Hostel	N	N	N	N	Y	N	N	CU	N	Y	Y	Y	Y	N	N
Hotel, Motel Lodging	N	N	N	N	CU	N	N	N	(See Sec. 4.4.1 (d) 1)	N	Y	N	Y	N	N

Appendix A-Use Table – All Zoning Districts

25. Dormitories are only allowed on properties contiguous to a school existing as of January 1, 2010.
26. The mixed uses shall be limited to those that are either permitted, conditional, or pre-existing nonconforming in the zoning district.
27. This use is permitted or conditionally permitted on lots south of Home Avenue only when one or more Industrial or Art Production use(s) exists on the lot, and when the combined gross floor area of all uses with this footnote does not exceed 49% of the Gross Floor Area on the lot.
28. Grocery Stores up to but not to exceed 35,000 square feet may be permitted subject to conditional use approval by the DRB in that portion of the Enterprise-Light Manufacturing District between Flynn and Home Avenue.
29. Must be fully enclosed within a building.
30. New single detached dwellings are not permitted. However, a pre-existing single detached dwelling may be reverted to a single family use regardless of its present use if the building was originally designed and constructed for that purpose.
31. See special use standards of Sec. 5.4.13, Emergency Shelters.
32. Performing Arts Centers in the ELM zone shall be limited to properties with frontage on Pine Street up to 5,000 square feet in size, and to properties with frontage on Industrial Parkway up to 15,000 square feet in size. Performing Arts Centers may contain accessory space for preparation and serving food and beverages, including alcohol, provided this accessory space comprises less than 50% of the entire establishment.
33. Short-term rentals are permitted by right, subject to pre-building limitations and rental registration requirements pursuant to Chapter 18, Minimum Housing Standards of the City Code of Ordinances.

¹ For permitted and conditional uses within the Downtown and Waterfront Form Districts, refer to Article 14.

Below are the Chapter 18 standards. Below are highlighted rules in regards to hosts living on the premises. Amendment No. ZA-20-05 would allow my Airbnb to operate without a conditional use permit in this situation.

Tom either does not understand Amendment No. ZA-20-05, or he misrepresented it. My Airbnb would be permitted under this amendment. There would be no requirement for a conditional use permit.

Tom: “The two rental situations (sharing a bedroom in a home versus renting a completely separate unit) have much different neighborhood impacts. These differing impacts arise in large part because there is no built-in management or control of separate units. As the renters are not sharing space with the owner, renters come and go as they please without concern of disrupting the single family home and without the owner being aware.”

There is absolutely a built-in management and control system in place for my airbnb. I am closer than anyone else in regards to physical distance. The vast majority of my time is spent at home, especially during the pandemic. I am completely aware of the activities of my guests. Since the property is my primary residence, I am able to act as an onsite manager and immediately deal with any situations arising from my guests.

Tom “The direct impacts to me are that I have to ask renters to stop parking and blocking the sidewalk, I have to go out [at midnight](#) and ask renters using the hot tub (new activity) to quiet down, I have to ask renters to not smoke in my driveway, and I have to be disturbed by renters in front of my house talking loudly on their speaker phone. Neighbors that actually live here do not cause any of these impacts. Before the AirBnb, I experienced a neighborhood that was extremely quiet, especially after the evening commute hours.”

I have asked Tom on multiple occasions to directly call or text me when situations arise, however he does not.

Tom: "The situation is getting worse. Rental activities and impacts are increasing. A few examples are:

a. Sometimes renters have more than one car (permit condition limits renters to one car); when this happens they block the sidewalk.

b. There is new hot tub use (From AirBnb reviews it appears that the hot tub was installed around November 2020); there wasn't a hot tub before this. Now renters are waking me up [at midnight](#) whooping it up in the hot tub.

c. There is a pool in back yard that hasn't been used since I have lived here. Mr. Heller is getting it ready for use and recently has taken down several large trees around the perimeter of the pool. The AirBnb ad says the pool is going to be part of the rental package. The hot tub and pool use by renters is commercial use and should NOT be allowed.

d. The rental use commonly is one or two renters. But, there has also been a family of four, sometimes there are three renters, and recently on March 15 there were 5 people renting the unit. More people results in more noise and activity and more disruption to my quiet enjoyment of my property.

The adverse impacts from the short-term rental activities are not hard to understand: Neighbors living next to each other impact each other, but the disturbances become predictable over time and often neighbors work with each other in reasonable ways to reduce impacts."

The pool and hot tub have been in use since before I purchased the house in 2001 and have always been shared. Many of these issues could be resolved in a timely manner by contacting me directly when they occur. Sharing my property with guests, including the pool and hottub, should not be considered commercial use. Tom has refused to work with me on many of the issues stated.

Tom: "On the other hand, when you have transient people changing out daily, disturbances are not predictable and they don't get worked out. To be clear, I'm not using transient as a derogatory term; however, people who are only staying one or two nights have different interests than people who live here. They are on a trip or on vacation, letting off steam, they don't have to work the next day, they stay up late, maybe they have a few drinks and get noisy. Whatever happens, they are leaving the next day and they are not too worried about their impacts."

I strictly enforce a set of quiet hours in adherence to the Burlington Noise Ordinance. I have never been ticketed with a noise violation. It is biased to state all guests stay up late, drink, and get noisy. This is not the reality for the vast majority of guests who stay with me.

Tom: "When approving the B&B use, City regulations require you to consider:

1. First and foremost; whether the use actually qualifies as a B&B. which was proposed as "1 BR in a single family home", or whether it is actually an accessory unit which may only be approved pursuant to special use regulations. See BCDO Appx. A (listing B&B's as conditional uses in the RL-W District); BCDO § 3.5 (describing conditional uses and review criteria) BCDO § 5.4.5 (setting forth the special use regulations for accessory dwelling units)."

BCDO Appx. A Current Use Table

(<https://www.burlingtonvt.gov/sites/default/files/20201216%20Appendix%20A%20-%20UseTable.pdf>):

Appendix A-Use Table – All Zoning Districts

	Urban Reserve	Recreation, Conservation & Open Space			Institutional	Residential			Downtown Mixed Use ¹	Neighborhood Mixed Use				Enterprise	
USES	UR	RCO - A	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
RESIDENTIAL USES	UR	RCO - A ¹	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
Single Detached Dwelling	N	N ¹	N	N	Y	Y	Y	N ¹⁰	N	N ¹⁰	N ¹⁰	N ¹⁰	N	N	N
Attached Dwellings - Duplex	N	N ¹	N	N	Y	CU ²	Y	Y	N	Y ³	N	Y	N	N	N
Attached Dwellings - Multi-Family (3 or more)	N	N ¹	N	N	CU	N	Y	Y	N	Y	Y	Y	Y	N	N
Attached Dwelling(s) – Mixed-Use ¹¹	N	N ¹	N	N	CU	CU	CU	CU	N	Y	Y	Y	Y	N	N
RESIDENTIAL SPECIAL USES	UR	RCO - A	RCO - RG	RCO - C	I	RL/W	RM/W	RH	DW-PT ¹⁶	NMU	NAC	NAC-RC	NAC-CR	E-AE	E-LM
Assisted Living	N	N	N	N	CU	CU	Y	Y	N	Y	Y	Y	Y	N	N
Bed and Breakfast ^{1, 5}	N	N	N	N	CU	CU	CU	CU	N	Y	Y	Y	N	N	N
Boarding House ⁶ (4 persons or less)	N	N	N	N	CU	CU	Y	Y	N	Y	Y	Y	N	N	N
Boarding House ⁶ (5 persons or more)	N	N	N	N	CU	CU	CU	CU	N	CU	CU	CU	N	N	N
Community House (See Sec. 5.4.4)	N	N	N	N	CU	CU	CU	CU	N	CU	CU	CU	CU	N	N
Convalescent /Nursing Home	N	N	N	N	CU	CU	Y	Y	N	Y	Y	Y	Y	N	N

Tom: “BCDO Art. 13 defines a B&B as “an owner-occupied residence, or portion thereof, in which short-term lodging rooms are rented and where only a morning meal is provided on-premises to guests.” This requires that a B&B is a shared-living structure where only “lodging rooms,” which do not include separate sanitary or food preparation areas, are available for rental. In addition, the BCDO also requires that any B&B in the RL-W district “must be owner-occupied.” See BCDO Appendix A. This definition does not contemplate a separate apartment complete with the associated facilities necessary for independent living and separate from the owner’s residence, as is the case here.

[81 Dunder Road](#) is operating a separate accessory unit, which the BCDO defines as “an efficiency or one bedroom apartment that is clearly subordinate to the principal dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation.”

See BCDO § 5.4.5. Here, the short-term rental activity is located in a separate unit with no connection to the single-family use. The listing itself advertises as a separate unit: “Entire home- You’ll have the house to yourself.” Moreover, the short-term rental provides separate food preparation facilities and sanitation facilities, irrespective of the hosts, unlike a B&B.”

Bed and Breakfast: An owner-occupied residence, or portion thereof, in which short-term lodging rooms are rented and where only a morning meal is provided on-premises to guests.

Definitions (<https://www.burlingtonvt.gov/sites/default/files/20201216%20ART13-Definitions.pdf>):

Bed and breakfast permits are the current standard for Airbnb operation for hosts living on the property as their primary residence. Future changes to the zoning ordinance will clarify how airbnbs operate. Until then, this is the process.

Tom: "The way this B&B is being managed is more like a hotel or resort (separate unit and hot tub and pool) which is commercial use not a residential home use. Thus, the rental use as a separate accessory unit is not consistent with the B&B Permit. The rental of a separate accessory unit has not been reviewed or approved."

Hotel, Inn or Motel: An establishment providing for a fee three or more temporary guest rooms and customary lodging services, and subject to the Vermont rooms and meals tax.

My airbnb does not meet the definition of Hotel, Inn or Motel. My airbnb should not be subject to these zoning ordinances.

Tom: "2. Whether the the B&B changes the character of the area. See BCDO § 3.5.6(a)(2).

What is the character of the area? There are just over 90 properties in the South Cove Association. I am aware of only 1 accessory apartment and that has a long-term renter. The remainder of the properties are single-family homes that are predominately owner occupied. It is a very quiet neighborhood; once people are home from work there is little traffic as the streets are not through streets.

So YES, the short-term rental changes the character of the area- new transient renters come and go daily. A cleaner comes and goes in between. Traffic and PARKING is irregular."

Home owners use their vehicles no different than airbnb guests when traveling to and from the neighborhood. Below are pictures of a typical day of parking and traffic.





Tom: "These renters have little concern for their disruptions. Because of the shortterm rental, it is no longer a trusted neighborhood. Renters are mostly out of state from NY, CT, MA, OR, UT to name a few. I do not feel comfortable leaving my house unlocked, even for a few minutes for a dog walk."

I utilize Google nest surveillance cameras with night vision and facial recognition I have not noticed any suspicious activity. I am aware of every vehicle and have a video recording of every person that walks up or down Dunder Road.



Tom: "3. Whether the use will have nuisances. See BCDO § 3.5.6(a)(3).

Yes - I am being woken up [at midnight](#) by loud renters. Think about it, these renters are on a get-away or vacation when people tend to live it up even late into the night."

Again, It is biased to state all guests, "tend to live it up even late into the night."

Tom: "This is what I ask:

1.The AirBnb changes the character of the neighborhood and creates several nuisances. The approval limiting the rental to 1 BR WITHIN home has not been complied with and the conditions set by the permit have not been honored. The approval should be revoked.

2. If any rental is allowed then I request the following conditions:

a. Expressly prohibit short-term rental of the accessory unit. Such rental has not been applied for or reviewed;"

b. Require a tall privacy fence along my common boundary. Limit renters to going in and out of the front door to minimize disturbances. The driveway is right on the common boundary so privacy is still a concern.

c. Limit the number of renters to TWO at a time.

d. Set a condition for no outside noise [between 10 PM and 7 AM](#).

e. Do not allow renters to use the outside hot tub or pool. The expanding activities are akin to a hotel or resort; these are commercial uses not appropriate for residential zones. These outside activities have the most disrupting impacts."

1, 2a - This is not factually correct.

2b - I already agreed to a tall privacy fence. I intend to use the entrances that I am permitted to have as I see fit.

2c - I will base my capacity off of fire marshal occupancy requirements.

2d - This is already a requirement in regards to the Burlington Noise Ordinance.

2e - There is no ordinance stating this activity is a commercial use. My airbnb does not meet the definition of a Hotel, Inn or Motel. My airbnb should not be subject to these zoning ordinances.

Tom is critical that my guests are not using the "front door" and then asks that they are limited to minimal use of "front door" which makes no sense. My permit clearly states my guests are allowed to enter through the street facing entrance that was inspected upon approval.

I am a small host compared to many others in the community. I do not believe my airbnb has a significant impact compared to other Bed and Breakfasts in the area.

Thanks
Jonathan